Autoprod, Inc. *and* Shopmen's Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO *and* Gerhard Maurer, Petitioner, and Shopmen's Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO. Cases 29-CA-7227 and 29-RD-311

November 5, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On May 29, 1981, Administrative Law Judge Julius Cohn issued the attached Decision in this proceeding. Thereafter, the Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.

The Respondent's flagrant misconduct, as evidenced by the record in this proceeding, caps a decade of contumacy and flagrant disregard of its employees' rights under the Act during which the Respondent has flouted court-enforced orders of the Board and persistently ignored its statutory obligations. The Board previously found that the Respondent sought to undermine the Union's 1972 organizing campaign by engaging in unlawful interrogations, making threats, and discriminatorily discharging two of the four principal employee organizers. As part of the remedy, the Board imposed a *Gissel* bargaining order.[2]

Following enforcement of the Board's Order by the Second Circuit in 1974,[3] the Union made an abortive effort to negotiate a contract and the parties held a series of meetings. Contemporaneously, the Respondent granted unilateral wage increases, refused to provide requested information to the Union which was relevant to its representative function, and finally terminated negotiations, upon the filing of a decertification petition, in the context of the above unfair labor practices which, the Board found, could have reasonably been predicted to result in employee disaffection. Based on the foregoing, the Board concluded that the Respondent bargained in bad faith from the inception of negotiations.[4]

Thereafter, the parties bargained, reaching agreement on April 29, 1977, when President Joel Tropp signed a draft contract on behalf of the Respondent. This agreement, effective from January 1977 through May 1979, provided for a reopener on wages and other economic issues on 30-day notice prior to September 1 of each contract year.

In July 1977, the Union requested bargaining pursuant to the reopener. The Respondent did not reply. The Union invoked the (interest) arbitration clause of the contract. The Respondent, having repudiated the agreement, attempted unsuccessfully to stay the arbitration and the court directed the parties to proceed. The Respondent's argument, both before the court and, later, the arbitrator, that no agreement was in fact reached was found to be without merit. Specifically, the Respondent asserted that Tropp signed the draft agreement in order that it might then be reviewed by his counsel. The award, handed down on April 20, 1978, mandated, *inter alia*, a $1-an-hour across-the-board wage increase, effective that date, and payment by the Respondent into the Union's pension and welfare funds, effective June 1, 1978. The Respondent began making payments into the funds in July 1978, but admittedly each payment thereafter was "somewhat" late. Moreover, the Respondent failed to pay the required wage increases, as mandated, and the Union brought court action for confirmation of the award. The Respondent began payment of the wage increases in December 1978, following confirmation.

At that time, the Respondent was also in breach of its contractual obligation to increase vacation benefits. Further, disputes concerning the Respondent's failure to make proper payments into the pension and welfare funds and to pay employees Schneider and Edwards the entire amount of their retroactive wage increases remained unresolved. In late February or early March 1979, the Union requested certain payroll information relevant to issues raised in connection with these disputes and, on March 20, filed for arbitration. The Respondent, however, withheld the requested information until immediately after a second decertification election, which was held on May 4, only 1 week prior to the scheduled arbitration.

[1] The Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] 201 NLRB 597 (1973).

[3] 489 F.2d 752.

[4] 223 NLRB 773 (1976).

On the facts and for the reasons set forth in his Decision, the Administrative Law Judge found that the Respondent violated Section 8(a)(1) of the Act at preelection dinner meetings by threatening employees with loss of overtime and side jobs if the Union won this second decertification election, and by promising improved pension benefits if it lost.[5] He also found that the Respondent engaged in violative conduct by suggesting to employee Schneider that he need not comply with a subpena to appear at the May 1979 arbitration hearing.

Further, the Administrative Law Judge found that the Respondent violated Section 8(a)(3) by failing, for discriminatory reasons, to pay Schneider and Edwards the entire amount of their retroactive wage increases, as required by the April 20, 1978, award.

He also found that the Respondent violated Section 8(a)(5) by failing to fully implement the $1-an-hour across-the-board wage increase mandated by the earlier arbitration award until a time well within the 10(b) period; by similarly delaying the required increase in vacation benefits and the payments into the Union's pension and welfare funds; by failing to comply in timely fashion with the Union's request for information required in the prosecution of the grievances mentioned above; and, further, by dealing directly with employees at the preelection dinner meetings concerning their pension and welfare benefits, in disregard of the Union's representative status.

Finally, based on the foregoing instances of misconduct, and in the light of the entire record in this proceeding, the Administrative Law Judge found that the evidence pointed to an "overall repudiation of the collective-bargaining agreement" by the Respondent and a "course of conduct designed to undermine the Union and to derogate its role as a bargaining representative."

For these reasons, having sustained the Union's objections to the election, based on threatened loss of overtime and promised improvements in pension and welfare benefits, he recommended that the decertification petition be dismissed.

In its exceptions to the Administrative Law Judge's Decision, the Respondent renews its incredible arguments that President Tropp signed the draft agreement only so that it could be "reviewed" by his counsel, that the contract reopener was limited to wages only, and that the arbitrator's award itself cast doubt as to whether the required wage increase amounted to $1 per hour or per day. While conceding that delays occurred in the payment of wage increases, even after all collateral efforts to forestall payment had failed, the Respondent asserts merely that such delays were an "oversight." The Respondent argues that its delay in granting the increase in vacation benefits was likewise an oversight and that the continuing delay in making payments into the Union's pension and welfare funds was not significant. Such arguments are patently frivolous.

In these circumstances, and in the light of the Respondent's long history of intransigence, we conclude that traditional forms of relief are inadequate as a means of effectuating the policies of the Act and serving the public interest. Rather, we deem it appropriate that the Respondent be required to reimburse this Agency for the costs which were wantonly and unnecessarily forced upon it in the litigation of this proceeding, as a means of restoring the *status quo ante*.[6] To this end, we shall order the Respondent to reimburse the Board for its costs and expenses incurred in the investigation, preparation, presentation, and conduct of this proceeding, including salaries, witness fees, transcript and record costs, printing costs, travel expenses and per diem, and such other reasonable costs and expenses as are found appropriate.[7]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Autoprod, Inc., New Hyde Park, New York, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Designate paragraph 2 as paragraph 1(l), and paragraph 3 as paragraph 2.

2. Insert the following as paragraph 2(c) and reletter the subsequent paragraphs accordingly:

"(c) Make whole the National Labor Relations Board for the reasonable costs and expenses incurred by it in the investigation, preparation, presentation, and conduct of this proceeding, said sums to include interest as set forth in the section of the Administrative Law Judge's Decision entitled 'The Remedy.'"[8]

[5] Predictably, the Union lost this election.

[6] *J. P. Stevens & Co., Inc.*, 244 NLRB 407 (1979), enfd. 668 F.2d 767 (4th Cir. 1982).

[7] See *Tiidee Products, Inc.*, 194 NLRB 1234, 1236–37 (1972).

[8] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962). Member Zimmerman regrets that Member Jenkins has seen fit in his partial dissent to disparage the Board for adhering to its position regarding computation of the remedial interest rate. Having cited two wholly irrelevant cases to dramatize his point (*Vaca* v. *Sipes*, 386 U.S. 171 (1967), and *N.L.R.B.* v. *Radio and Television Broadcast Engineers Local 1212, International Brotherhood of Electrical Workers, AFL-CIO* [*Columbia Broadcasting System*], 364 U.S. 573 (1961)), Member Jenkins then concedes that

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3. Substitute the attached notice for that of the Administrative Law Judge.

IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed insofar as it alleges violations not expressly found.

IT IS FURTHER ORDERED that the election in Case 29-RD-311 be, and it hereby is, set aside, and that the petition in that case be, and it hereby is, dismissed.

MEMBER JENKINS, dissenting in part:

In *Olympic Medical Corporation*, 250 NLRB 146 (1980), I proposed that we take several steps to keep our interest rates on backpay more closely aligned with the sharply fluctuating interest rates which those unlawfully discharged would have to pay on funds borrowed to replace their lost wages. Such action was necessary to achieve an adequate "make whole" remedy and to avoid the windfalls and penalties, to both employees and employers, which a fixed rate causes. After several years of serious pressure caused by extreme changes in interest rates, the Board, including me, finally made a belated and inadequate effort to adjust to the new situation by adopting the formula used by the Internal Revenue Service for interest on tax deficiencies and refunds. *Florida Steel Corporation*, 231 NLRB 651 (1977). Subsequent efforts to persuade my colleagues to move farther toward a closer alignment with market rates failed, leading to my dissent in *Olympic Medical.*

The IRS formula there reaffirmed by the Board seemed defective to me for three major reasons:

First, that formula lagged 2 years behind actual changes in interest rates, thus continuing the windfall-penalty effect of not using current rates; if rates were rising, the creditor-employee suffered a penalty and the debtor-employer received a corresponding windfall; if rates were falling, the opposite was true; and if rates fluctuated widely but after 2 years ended about where they started, either party could be victimized. The recent sudden drop in interest rates, which will penalize employers severely, dramatizes the effects.

Second, the IRS formula did not change the rate unless the market rate differed by at least 1 percent from the existing formula rate, another arbitrary standard which distributed windfalls and penalties capriciously.

Third, the IRS formula rate was only 90 percent of the market rate, a plainly arbitrary figure which made a "make whole" remedy impossible.

Congress, in the Economic Recovery Tax Act of 1981, effective January 1, 1982, has now corrected most of these deficiencies. The IRS rate is now adjusted annually instead of every 2 years. It is to be 100 percent rather than 90 percent of the market rate. And the adjustment is to be made even though the difference between the existing IRS rate and the market rate is less than 1 percent.

Thus, most of the objections I set out in *Olympic Medical* have been met. One deficiency remains in the IRS formula: Quarterly adjustments in the rate, which would take very little effort, would be much more desirable than annual adjustments. We should now take this additional step to bring our remedy more nearly to "make whole." Our failure to do so, even after Congress has pointed the direction, reflects the same inability to meet an issue which the Supreme Court, in *Vaca* v. *Sipes*, 386 U.S. 171, 183 (1967), called our "tardy" action, or which the same Court, in *N.L.R.B.* v. *Radio and Television Broadcast Engineers Local 1212, International Brotherhood of Electrical Workers, AFL-CIO* [*Columbia Broadcasting System*], 364 U.S. 573, found to be a dereliction of our responsibility to decide jurisdictional disputes on their merits instead of examining merely contractual provisions and our prior orders and certifications. Despite this, the battle has been largely won, and further dissents from our use of the IRS interest rate will, it is evident, have no effect on my colleagues. Consequently, though I remain persuaded we should do more, I shall no longer say so routinely in each case.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT threaten employees with loss of overtime and side jobs if they continue to support Shopmen's Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, or any other labor organization.

WE WILL NOT promise to increase pension and welfare fund benefits provided employees withdraw their support and assistance for the Union.

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the differences between himself and the Board have narrowed to the single issue of quarterly rate adjustments, and tacitly agrees that time has demonstrated the soundness of our adherence to the Internal Revenue Service formula.

WE WILL NOT promise to recognize another union or a grievance committee of the employees if they vote to decertify the Union.

WE WILL NOT advise employees that they are not required to honor subpenas directing their attendance at arbitration hearings conducted under the grievance procedure of the collective-bargaining agreement.

WE WILL NOT refuse to pay retroactive pay increases due employees because of their support for the Union or otherwise discriminate against such employees.

WE WILL NOT refuse to recognize and bargain with the Union as the representative for purposes of collective bargaining on behalf of the employees in the following appropriate unit:

All production and maintenance employees, including plant clerical employees, but excluding office clerical employees, superintendents, independent maintenance contractors, employees represented by other labor organizations, and all supervisors as defined in the Act.

WE WILL NOT repudiate our obligations under any agreement entered into between Autoprod, Inc., and the Union and refuse to comply with the terms and conditions provided in such agreement.

WE WILL NOT refuse and fail to pay wage increases, vacation benefits, and pension and welfare benefit payments provided in any collective-bargaining agreement between Autoprod, Inc., and the Union, or set forth in any arbitration award rendered pursuant to the grievance procedure of such agreement.

WE WILL NOT deal directly with our employees and bypass their duly authorized collective-bargaining representative concerning conditions of employment.

We will not refuse to furnish payroll records and other documents relevant to the processing of a grievance by the Union under the contract.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL recognize and, upon request, bargain with the Union for our employees in the appropriate unit described above.

WE WILL make whole William Schneider and Al Edwards for any retroactive wages due to them or any other losses because of our refusal to make such payments with interest.

WE WILL make whole any other employee in the appropriate unit for any loss sustained because of our failure to make timely payments of wage increases due pursuant to an arbitration award, with interest.

WE WILL compensate the Board, with interest, for its expenses in preparing for and in conducting this proceeding.

AUTOPROD, INC.

DECISION

STATEMENT OF THE CASE

JULIUS COHN, Administrative Law Judge: This proceeding was heard at Brooklyn, New York, on June 2, 3, and 4, 1980. Upon a charge filed and served on May 29, 1979, by Shopmen's Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, herein called Local 455 or the Union, the Regional Director for Region 29 issued a complaint on July 31, 1979, alleging various violations of Section 8(a)(1), (3), and (5) of the Act by Autoprod, Inc., herein called Respondent or the Company.

A petition in Case 29-RD-311 having been filed by the Union on March 14, 1979, pursuant to a Stipulation for Certification Upon Consent Election approved April 3, 1979, an election by secret ballot was conducted on May 4, 1979, among the employees in a stipulated appropriate unit. The tally of ballots revealed that, of approximately 14 eligible voters, 5 cast votes for, and 7 cast votes against, the Union and 2 ballots were challenged. The challenged ballots were not sufficient in number to affect the results of the election. Thereafter, on May 10, 1979, the Union filed timely objections to conduct affecting the results of the election. The Regional Director, having found the issues raised by the objections may best be resolved by a hearing, and that the Board may dismiss the petition if it found that Respondent had engaged in the violations of Section 8(a)(5) as alleged in the complaint, issued an order consolidating these matters on August 27, 1979. Respondent filed an answer denying the commission of any unfair labor practices.

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. The General Counsel and Respondent submitted briefs which have been carefully considered. Upon the entire record in the case, and from my observation of the witnesses and their demeanor, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Respondent, a New York corporation, has an office and place of business in New Hyde Park, New York, where it is engaged in the manufacture and sale of machinery for the food processing industry. During the year preceding the issuance of the complaint, Respondent purchased goods and materials valued in excess of

$50,000, of which goods and materials valued in excess of that sum were transported and delivered to its plant directly from States in the United States other than the State of New York.

The complaint alleges, Respondent admits, and I find that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION

The Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

The relationship between the Union and Respondent goes back to early 1972 when the Union engaged in an organizational campaign of Respondent's employees which numbered from 12 to 14. This campaign culminated in a Board proceeding and order which found that Respondent had engaged in violations of Section 8(a)(1), (3), and (5) of the Act, including coercive interrogation of employees, threatening employees with loss of benefits, and the discriminatory discharge of two of the employees who were the principal organizers. Finally, finding that Respondent's unfair labor practices rendered impossible a fair election, the Board ordered that the Company recognize and bargain with the Union (201 NLRB 597). In 1974 the Board's order was enforced by the United States Court of Appeals of for the Second Circuit (489 F.2d 752).

Subsequent to the decision in that case, the parties' attempts to engage in bargaining resulted in a further Board proceeding. In the second case, the Board found that Respondent had engaged in various violations of Section 8(a)(5) of the Act, including bad-faith bargaining, unilateral changes in wages and conditions of employment, and failing and refusing to comply with the Union's request for information as to the addresses of employees in the bargaining unit. Finally, it was also held that Respondent unlawfully terminated negotiations following the filing of a decertification petition and withdrew recognition from the Union. The Board determined that this withdrawal was in the context of Respondent's unlawful conduct which could have reasonably been predicted to cause employee disaffection (223 NLRB 773 (1976)).

B. *Facts*

The saga of the relationship between these parties continued through arbitration and court proceedings leading to the instant case. After the second Board order, the parties engaged in bargaining which resulted in the execution of a collective-bargaining agreement on April 29, 1977, by Respondent, through its president, Joel S. Tropp. This agreement was by its terms effective from January 1, 1977, until May 31, 1979, and provided that upon 30 day's written notice before September 1, 1977, and September 1, 1978, the Union may reopen for purposes of wages and other economic issues and that unresolved issues could be submitted to arbitration.

In July 1977 the Union wrote Respondent, requesting bargaining on the reopener. According to William Colavito, president of the Union, he had been previously unsuccessful in getting the Company to implement the contract and was not even certain whether it was paying the agreed rates of wages since he had no access to its records. This was also true as to other provisions. In any case the Company did not respond to his July request for bargaining on the re-opener and the Union then invoked the arbitration provision of the contract. Thereupon Respondent went to court to stay the proceedings. Ultimately it did not succeed, and the court directed Respondent to proceed to the arbitration. Before both the court and the arbitrator Respondent first pleaded that it had not even executed the contract. No merit was found to this contention.

A hearing was held before an arbitrator in March 1978 after which an award was issued on April 20, 1978. The arbitrator, finding that the collective- bargaining agreement had been validly executed, awarded an increase of $1 per hour for all employees effective as of the date of the award, and further directed that Respondent join the Union's pension and welfare plans and commence payment for its employees to the Union's funds effective June 1, 1978. Respondent refused to put the award into effect despite letters from the Union and its attorney as well as telephone calls. Indeed at the hearing Tropp testified that he was unable to implement the awards at the time. Further litigation in the New York State Supreme Court ensued, and in November 1978 the Court issued its decision enforcing the arbitrator's award. Respondent finally began payments to the funds in July 1978.

In August it gave wage increases to its employees based on what was later determined to be an erroneous interpretation of the arbitrator's award of a $1- per-hour increase. Thus Respondent merely increased the minimum wage as provided in the contract by $1 rather than giving each employee $1 over the amount he was actually receiving. As a result the increases varied from nothing to $1. In addition Respondent at that time refused to make the wage increases retroactive to April 20, as provided in the award, forcing the Union to bring action in the State Court for confirmation of the award. In December 1978, following the Court's enforcement, Respondent finally instituted the correct rates of pay as provided in the arbitration award and made the retroactive payments which it had previously refused. According to Colavito, Respondent was also behind in its payments to the pension and welfare funds.

The contract which was effective from the beginning of 1977 increased vacation benefits previously in effect by providing that employees with 3 or more years of service would receive 1 additional vacation day in the fourth year of service and 1 day for each year thereafter up to a maximum vacation of three weeks. It is uncontradicted that Respondent did not pay those employees who were entitled to these additional days, nor did it give them the additional time off. According to an employee witness, Gabriel Sinagra, he only learned he was entitled to more vacation at the end of 1978, and Colavito testified he did not become aware that employees were not

receiving this additional benefit until late 1979. In any event, it was not until December 27, 1979, that Respondent paid the employees who were entitled to these extra days.

There were several problems with regard to the implementation of the arbitrator's award increasing wages by $1 per hour effective April 20, 1978, as applied to certain individual employees. Two employees, William Schneider and Albert Edwards, were hired in July 1978. Although Respondent gave Edwards the $1-per-hour increase as of August 16, and Schneider his increase as of September 7, neither one of these employees ever received the amount of increase to which he was entitled back to the date of his original hire. Two other employees, Karl Melger and Thomas Nails were discharged on September 22, 1978. Finally, after Colavito made a number of requests to Respondent, these two employees received the additional wages to which they were entitled at the end of March 1979.[1]

In connection with a grievance filed by the Union concerning, among other things, Respondent's failure to make correct payments to the various union funds, the Union requested certain payroll records and information from Respondent. According to Colavito, in about October 1978 he received certain of these documents which he requested. Thereafter he also required the payroll records up to the end of December. This request was made, it is agreed, in late February or early March 1979. Despite repeated requests Respondent did not comply with these last payroll records needed by the Union, and, in the interim, the Union filed for arbitration relating to these matters on March 20, 1979. Finally on May 4, after the close of the election, the Company turned over the requested records to the Union, only 1 week prior to the date of the arbitration hearing.

One of the issues involved in this arbitration was whether Schneider and Edwards were entitled to retroactive pay, as noted above. Schneider testified that Tropp had approached him some weeks before the arbitration and told him that he and Edwards were going to lose the arbitration. According to Schneider, Tropp also indicated that another issue in the abritration had to do with the rehiring of Nails and Melger, and that, if the Union forced him to take back Melger, Schneider would be laid off as he had been the last man hired. In addition, Schneider further testified that just prior to the date of the arbitration hearing, Tropp approached him in the shop and asked if he had received a subpoena, as he wanted to see it and show it to his attorney. Tropp told him that he wanted to see if there were some way Schneider could get out of going and whether the subpoena did not have to be honored. Schneider replied that he wanted to go to the arbitration.

In his testimony Tropp did not allude to the subject of whether he had told Schneider that he and Edwards were going to lose the arbitration and that, if he were forced to take back Melger, Schneider would have to go. However he did address himself to the allegations with respect to the subpoenas. Tropp stated that on May 18 before the arbitration Schneider had asked to see him, so he did talk to him in the shop at his machine. He asserts Schneider told him Colavito had called to inform him he was going to receive the subpoena. Schneider asked Tropp whether he would have to go to the arbitration and also mentioned that he himself was not pushing it, rather it was the Union. Tropp said he would check with his attorney and then went back to Schneider and told him he should appear at the hearing if he received the subpoena and just tell the truth. This incident is one of the few matters as to which there is conflict in the testimony. I credit Schneider who testified in a straightforward and forthright manner. Tropp conceded his affidavit does not reflect that Schneider spoke to him about a subpoena, but refers only to Edwards in connection with the arbitration. Yet Tropp admitted speaking many times to Schneider about the arbitration. In view of these inconsistencies and the previous history of Respondent, I do not credit Tropp's version of the subpoena matter.

On March 14, 1979, a decertification petition was filed. Shortly thereafter Tropp held a series of dinners at Respondent's expense to which he invited all of the employees in small groups. The following details concerning certain matters which were discussed by Tropp with the employees at these dinners are based on the testimony of Tropp himself. The principal topics related to the Union's pension and welfare plan. Tropp had prepared himself by obtaining from various carriers written proposals regarding these type of plans which were exhibited to the employees along with the details of the union plans. Basically Tropp told the employees that the principal problem was the cost to Respondent of the Union's plans. He indicated this to the employees in two ways. He told them, and by means of exhibiting the plans, that for the same money, the outside plans would confer a great deal more in ultimate benefits, that is, the monthly pension payment each would eventually receive upon retirement. Each proposal showed the name of the employee and the amount each would receive upon retirement. Although employee witnesses testified that Tropp orally mentioned to them that certain employees would receive as much as $8,000 per month under one of these plans for the same amount of money now being paid to the union fund, Tropp denied stating it in that fashion. But it is clear from the record that such sum was written in the material passed around to the employees as the amount one of them, the youngest, would receive upon retirement. Tropp also discussed the plans from another point of view, telling the employees that the same benefit as provided in the union pension plans could be obtained by the payment of a much smaller contribution than the Company was presently making to the union fund. In connection with this, Tropp emphasized the need of Respondent to be competitive.

Tropp complained to the employees about his cost for overtime work and side jobs[2] which was increased greatly, he claimed, as a result of the provision of the union plan. He said that the costs for the other plans he was exhibiting were based on a flat 40-hour week, while the

[1] These and other matters referred to above are uncontroverted and in most instances a matter of documentary record.

[2] Side jobs were additional work performed on piece rate basis.

union plan was based on the total amount of hours worked including overtime. Since overtime was paid at time and a half, this greatly increased the amount of contribution that would be paid on the overtime thus adding considerably to his cost. He again stressed the need to be competitive when bidding for jobs.

Tropp conceded that in discussing the funds and plans he did not mention such features as portability or dental coverage, which were available under the union pension and health plans but not in the alternatives he was presenting.

Employees testified that Tropp characterized Local 455 as a construction local many of whose members work only 8 months a year, which was a factor in driving up the costs of the pension and welfare funds. Tropp himself stated that he told employees that the Union's general contract does not cover many machine building companies such as Respondent but that the major emphasis was in structural steel and ornamental iron work shops. Colavito testified without contradiction that the vast majority of the Union's membership consisted of employees in shops such as Respondent, and were not in the construction trades, although they may have worked in the manufacture of products used by construction companies. In general, Tropp told the employees that the Union's funds cost too much money and he asked them to decertify the Union.

Employees Schneider and Sinagra both testified that, at the different dinners they attended, Tropp, in referring to the expenses of the union plans, commented that the union delegates might be pocketing some of that money or that some of it went to pay for the salaries of union officials. Once more for the reasons stated above, I credit the testimony of the employees as to these statements made by Tropp, who did not specifically deny these allegations in his testimony, but merely stated that he asked the men to vote out the Union.[3]

Tropp after being refreshed by his affidavit said that he did tell the employees about the Union's attempts to obtain reinstatement of Nails and Melger who had been discharged in September 1978. Tropp told them that the shop was a 12-man operation and, if the Union were able to bring back these two people, then two others would have to be let go. Tropp testified, however, that within the year before he made this statement, the Company did employ 14. This was also found to be a fact in one of the previous Board cases, and the tally of ballots in the decertification election indicated 14 eligible voters.

C. *Discussions and Analysis*

1. The alleged violations of Section 8(a)(5) of the Act

The principal issue here is whether the totality of Respondent's conduct gives rise to the conclusion that it has repudiated the collective-bargaining agreement in such a manner that the filing of the decertification petition was almost inevitable, and the election was in effect tainted and was indeed the culmination of Respondent's unfair labor practices and other activities. Viewed in this light, the determination need not be based on the question as to whether this or that incident alleged to be violative of the Act was indeed unlawful, or whether or not certain allegations of illegality are barred by Section 10(b) of the Act, but rather the overall effect of the conduct insofar as it reveals an attitude and course by Respondent to circumvent or at least delay the performance of its obligations. As I have previously indicated, the chronology of events is illustrative of the result.

As pointed out there have been two bargaining orders issued by the Board against this Respondent, the first arising out of a typical *Gissel*-type situation, and the second involving violations of Section 8(a)(5) for bad-faith bargaining, withdrawal of recognition, and refusal to furnish information, among others. Failure of Respondent to recognize its bargaining continued even after the negotiation of a contract when it failed to admit even having executed the contract despite the signature of Tropp on it. When the Union sought arbitration, Respondent went to the courts to block that procedure on the grounds that there was no agreement. Finally after losing in the state court, the same issue was brought before the arbitrator who found at the out-set that there was a valid collective-bargaining agreement. Respondent then failed to implement the terms of the arbitrator's award, and even after the award was enforced in the courts, it delayed putting the provisions of that award into effect.

The arbitrator's award provided for a wage increase retroactive to the date of the award, April 20, 1978. Respondent began giving the wage increases in August, on a partial basis, but not at all retroactively. The Board has found that the withholding of merit wage increases in these circumstances violates Section 8(a)(1) and (5) of the Act.[4] Similarly the Board has held that discontinuance of pension and benefit fund contributions constitutes a violation of Section 8(a)(5) of the Act.[5] In the instant case Respondent did not begin to make contributions to the Union's pension and welfare funds until about 2 months after the arbitration award, and payments were not brought up to date until sometime early in 1979. In this contention as to both the salary increases and fund contributions, Section 10(b) is of no avail to Respondent. The Board has held that "each failure to make the contractually required monthly benefit fund payments constituted a separate and distinct violation of Respondent's bargaining obligation . . . ."[6] Final payments on retroactive wage increases due to employees were not made by Respondent until the end of December 1978, and late fund contributions carried into 1979, well within the 10(b) period. In any case, the objective of this proceeding is not to seek payment of any wages due to employ-

[3] Employee Simone and Maqwuine also testified at the hearing. The latter stated that he is now a foreman and has never been a union member. They both testified to what occurred at dinner meetings they attended. I do not credit their testimony since they were both vague, had poor recollection, and testified in a guarded fashion, not even referring to matters that Tropp himself conceded he had said and discussed.

[4] *General Motors Acceptance Corp.*, 196 NLRB 137 (1972), enfd. 476 F.2d 850 (1st Cir. 1973).

[5] *Peerless Roofing Co., Ltd.*, 247 NLRB 500 (1980).

[6] *Farmingdale Iron Works, Inc.*, 249 NLRB 98 (1980).

ees,[7] but rather to utilize this conduct of Respondent as ground work for the issuance of a bargaining order.[8]

Another violation of the same order is found in the failure of Respondent to implement the vacation provisions of the contract which provided for additional days of vacation beyond 2 weeks for employees with over 3 years of employment. According to Respondent's records, payments to employees for vacation days running for a period of almost 2 years were made on December 27, 1979, so that this obligation was outstanding even beyond the date of the issuance of the complaint herein. Clearly on the basis of the cases cited, this was an additional violation of Section 8(a)(5) of the Act.

It is alleged that by failing to furnish payroll records requested by the Union in early March 1979 for the processing of a grievance relating to the administration of the Union's pension and welfare funds, Respondent also violated Section 8(a)(5) of the Act. These records were not furnished until May 4, a week before the arbitration hearing was scheduled. The General Counsel contends that the delay despite numerous requests constitutes a violation. Respondent admits the underlying facts but relies on the fact that eventually it did give the 1979 payroll records to the Union as sufficient compliance with the request.

It is well established that "wage and related information pertaining to employees in the bargaining unit, should upon request, be made available to the bargaining agent. . . ."[9] The Board has also held that delay and in attention to a matter relating to the collective-bargaining obligation might itself warrant a conclusion that a respondent violated the Act.[10] In the instant situation of neglect in furnishing information, Respondent exhibited the same characteristics as it did with the other matters found above to be violative of the Act. Thus, while the raise in pay rates, the additional vacation benefit, and payments to the Union's pension and welfare funds all were ultimately made, they were consummated after many months of delay all in disregard of the collective-bargaining agreement and Respondent's obligations thereunder. Accordingly, I find that by failing to furnish the requested information to the Union until just 1 week prior to the scheduled arbitration hearing, Respondent violated Section 8(a)(1) and (5) of the Act.[11]

In sum, the catalogue of events together with the specific violations of Section 8(a)(5), and independent violations of Section 8(a)(1) and (3) hereinafter found herein, points to overall repudiation of the collective- bargaining agreement by Respondent and a course of conduct designed to undermine the Union and to derogate its role as bargaining representative. This, too, violates Section 8(a)(5) of the Act.

2. The alleged violations of Section 8(a)(1) of the Act

The complaint alleges that during the course of the dinner meetings held by Tropp before the election, he threatened employees with loss of overtime and side jobs. I find merit to this allegation based on the testimony of Respondent's witnesses. Tropp told the employees that overtime work was very expensive because of the additional contributions the Company had to make to the pension and welfare plans. He further said he had to raise prices, the field is very competitive, and therefore they may lose their edge. In his affidavit, submitted to the Board agent prior to the issuance of the complaint, Tropp said the amount of work would be reduced for everybody because he had to pay money into the fund. At the hearing he denied having said this. Tropp told the employees that the funds were punitive, they cost too much money, he could not increase the business or grow. Simone, an employee called by Respondent as a witness, said Tropp told them at the meeting that, if he had to pay out a certain percentage in the overtime, he could not afford to compete with other companies. He said he would have to raise his prices too high and he could not afford it. Tropp repeated that he could not afford the overtime, as it was too expensive. Finally Simone said Tropp stated they would not have overtime except in certain cases when he really needed it. Erwin Schimkat, a part owner of Respondent, testified Tropp told the employees that overtime made them less competitive, and prices would have to be raised to cover it. I find by these statements Respondent was in effect threatening employees with loss of overtime and side jobs unless the Union were voted out, and thereby violated Section 8(a)(1) of the Act.[12]

With respect to overtime, employee Sinagra testified that during the dinner meeting he attended he mentioned he was not getting enough overtime and side jobs nor were these benefits spread out among the employees. Sinagra stated Tropp said he could not do anything until the Union was out and then the Company would straighten it all out. Sinagra further testified that a day or two before the election Nardozza called him to the office and said he was surprised that he had raised the question of overtime with Tropp at the meeting. In his testimony, Tropp recalled that Sinagra raised the question of overtime with him. After being refreshed by his affidavit he stated that two other employees, DaSilva and Melger, also asked about the disproportionate amount of overtime among the individuals in the shop. Tropp said he replied that he was not aware of this and was surprised they were bringing it up at the meeting but that he would check into it. The General Counsel alleges that on the basis of Sinagra's testimony Tropp promised a benefit of equalizing overtime should the Union be defeated. Absent any corroboration of Sina-

[7] Except Schneider and Edwards whose situation will be hereinafter dealt with.

[8] In this respect, the doctrines of *Spielberg Manufacturing Co.*, 112 NLRB 1080 (1955), and *Malrite of Wisconsin, Inc.*, 198 NLRB 241 (1972), are not applicable. As to the former, the issue of contract repudiation was not before the arbitrator but rather the issue of validity of the contract as well as performance by Respondent of its obligation to adhere to certain terms of the agreement. As to the latter, *Malrite* is concerned with the enforcement of the arbitrator's award and, as noted, the payments required of Respondent were ultimately received.

[9] *Cowles Communications, Inc.*, 172 NLRB 1909 (1968).

[10] *DePalma Printing Co.*, 204 NLRB 31 (1973).

[11] *Ellsworth Sheet Metal, Inc.*, 232 NLRB 109 (1977).

[12] There is no probative evidence that Respondent violated the Act in the same manner through statements of John Nardozza, production manager, as alleged in the complaint.

gra's testimony, noting that neither DaSilva nor Melger testified at the hearing, and in view of the fact that the subject matter was brought up by the employees, I find the General Counsel has not sustained his burden and shall dismiss this allegation of unlawful promise of benefit. For the same reasons I shall dismiss the allegation that by referring to the question of equalization of overtime, Respondent, through Tropp and Nardozza, engaged in unlawful solicitation of grievances, particularly as the matter was brought up by the employees.

As detailed above, Tropp discussed at length the union pension and welfare plans at the dinner meetings just prior to the election, and also described several other plans and presented them to the employees. This conduct constituted dealing directly with the employees and again reveals a disregard for the Union's status as bargaining representative, thereby further violating Section 8(a)(1) and (5) of the Act. In addition the manner in which Respondent's alternative plans were presented to the employees together with Tropp's disparagement of the Union is tantamount to promising the benefits improved of pension and welfare plans should they vote out the Union, again in violation of Section 8(a)(1) of the Act.

The complaint alleges that Respondent violated Section 8(a)(1) by the conduct of Tropp in offering, at one of the dinner meetings, to tell employees the name of a labor organization which would benefit them in order to induce them from supporting the Union. Schneider testified that, at the meeting he attended, Tropp told the employees they could get another union, mentioning the name of the Machinist Union. This is not corroborated by any of the other witnesses of the General Counsel. On the other hand Tropp, while admitting he urged employees to vote against the Union, and told them that 1 hour after the election, they can get a new union, denied mentioning the name of any union and said there was no such discussion. Schimkat, his partner, also said Tropp told employees they were free to get any other union, but he did not mention the Machinists. I find therefore that the General Counsel has not sustained his burden in showing that Respondent violated the Act by offering employees the name of another union.

On the other hand, Schimkat testified that Tropp not only said that the employees were free to bring in any union, but also said the Company could deal with employees directly on grievances if there were no union. Maquine, then an employee and now a foreman, testified that Tropp told the employees they had a right to form their own union, and Tropp similarly testified. In the overall context of this case, considering the violations already found, a suggestion to employees, prior to an election, that grievances could be handled by direct negotiations or by formation of their union, strongly hints of promises of benefits should the employees vote out the incumbent union and deal directly with Respondent. By this conduct the Company further violated Section 8(a)(1) of the Act.

Finally the complaint alleges that Respondent violated Section 8(a)(1) of the Act by advising employees that they are not required to honor subpoenas served by the Union with respect to scheduled arbitration proceedings. The facts are fully set forth above and I have credited the version of the incident testified to by Schneider. Therefore I find that, by Tropp's statements that the subpoena need not be honored, Respondent further violated Section 8(a)(1) of the Act.[13]

3. The alleged violation of Section 8(a)(3) of the Act

The complaint alleges that Respondent violated Section 8(a)(3) by its failure to have paid two employees, Schneider, referred to above, and Al Edwards, the retroactive wages due them under the arbitration award effective April 20, 1978. It also alleges this failure to be an additional violation of Section 8(a)(5) of the Act. Schneider and Edwards were both employed in July 1978, at a rate of $5.75, the lowest starting rate under the contract, and $5.80, respectively. These rates of course were increased by $1 pursuant to the arbitration award, and, clearly, if Respondent had implemented the award immediately, their starting rates would have been that much higher. According to the payroll records, Edwards received his $1 increase in August and Schneider in September. No employees received the retroactive payments as of April at that time. However, the Employer's records reveal that the retroactive payments due to the employees were made in December together with final adjustments in the rates of some employees. Two employees, Melger and Nails, had been discharged in September, and their retroactive payments were received in March 1979. Thus, Schneider and Edwards were the only employees who never obtained any retroactivity, and the General Counsel seeks reimbursement of the amount due them under the arbitrator's award from the date of hire until the day each received the $1 increase, which, it is alleged, was unlawfully withheld in violation of Section 8(a)(3) and (5) of the Act.

In contending that this refusal violated Section 8(a)(3), the General Counsel relies on several items. Thus I have already found that Respondent violated Section 8(a)(1) when Tropp asked Schneider whether he received a subpoena and could avoid appearing at the arbitration. In addition Schneider testified that the same time that the subpoena subject was brought up, Tropp told him that if the Union forced the Company to take back Melger (who had been discharged in September and concerning which the arbitration was going to be held), then Schneider would be laid off because he was the last man hired. Tropp stated that this was because the shop was a 12-man shop and admitted repeating this statement to the employees at the dinner meetings. However, this number is not entirely correct since a document supplied by Respondent, in evidence (G.C. Exh. 14), indicates that at least from the time of the hiring of Schneider and Edwards in 1978 until the discharges of Melger and Nails in

[13] *Mohican Mills, Inc.*, 238 NLRB 1242 (1978). I do not agree with Respondent's contention that this case is limited to a situation where a respondent harasses an employee for attending a hearing. Actually the Board approved violations found by the Administrative Law Judge who determined that the company therein violated Sec. 8(a)(1) of the Act by telling an employee he need not to go to the hearing, and also harassing him thereafter when he attended. The finding was made in the disjunctive.

September 1978 there were 14 employees. Moreover, Tropp conceded in his testimony that Schneider and Melger were in different work classifications. Conceivably, Schneider or Edwards would not lose their jobs if Melger or Nails were reinstated. Tropp also testified that he had spoken to Schneider in 1979 a number of times concerning the arbitration. At one time he told Schneider that he and another employee were in the same boat and they were going to lose the arbitration.

There is clearly no merit to Respondent's contention that it did not make the retroactive wage payments to Schneider and Edwards because they were not employees at the time of the arbitration award. As noted they would have received the correct rate if Respondent had implemented the award. In view of the fact that Respondent made the retroactive payments to all employees, even including the discharge of Melger and Nails, the failure to pay Schneider and Edwards was discriminatorily motivated, noting the 8(a)(1) violations found with regard to Schneider and, further, that Tropp admits also having spoken to Edwards about the subpoena.

Finally, Respondent contends that the claim of Schneider and Edwards to the retroactive backpay is barred by Section 10(b) of the Act. Indeed the liability exists only during a brief period between the dates of their hires in July, August, and September when they received their $1 increases. The contention has surface appeal since this was more than 6 months prior to the filing of the charge. However it must be remembered that all employees had the same claim for retroactive pay increases from the date of the arbitrator's award and no one received that money until the end of December 1978. Schneider and Edwards could rightly assume that they were going to be paid at the same time. Not receiving that money they pressed their claim, now within the 10(b) period, through the Union. Indeed Nails and Melger received their backpay in March 1979, indicating that Respondent still recognized its obligation to pay the retroactive backpay. I find, in the overall view of the case, that the discrimination against Schneider and Edwards occurred in the latter part of December 1978 when Respondent failed to pay them at the time it paid the other employees, and repeated this discrimination when Melger and Nails were paid. Therefore, I find Respondent violated Section 8(a)(1) and (3) of the Act by refusing to make the retroactive payments to Schneider and Edwards.

I have found above that Respondent repudiated the contract in violation of Section 8(a)(5) of the Act when it failed to implement the wage increases and the retroactive backpay payments, within the 10(b) period, to all the employees. The Board has held that discontinuance of contract wage payments by an employer constitutes a refusal to bargain and the failure to meet each payment constitutes an illegal act, and tolls the application of Section 10(b).[14] Thus, Respondent's refusal to make the backpay payments due Schneider and Edwards under the arbitration award through the collective-bargaining agreement continued to the filing of the charge herein and constituted an unlawful ongoing refusal, and thereby Respondent further violated Section 8(a)(5) of the Act.

[14] *Wayne Electric, Inc.*, 226 NLRB 409 (1976); *Nu-Car Carriers, Inc.*, 187 NLRB 850 (1971).

IV. THE OBJECTIONS IN THE REPRESENTATION CASE

The Union timely filed objections to conduct affecting the outcome of the election. After investigation, the Regional Director ordered a hearing on these objections and consolidated that matter with the hearing on the unfair labor practice charges. I have found extensive violations of Section 8(a)(1), (3), and (5) of the Act, including threats of loss of overtime, promises of increased pension and welfare benefits, and various other violations of Section 8(a)(1) occurring just before election. Moreover, I have also found violations of Section 8(a)(5) of the Act by Respondent's refusal to furnish information requested by the Union and, indeed, continuing repudiation of the collective-bargaining agreement. These violations were coextensive with the objections consolidated herein. The Board has stated that "conduct of this nature which is violative of Section 8(a)(1) is, *a fortiori*, conduct which interferes with the exercise of a free and untrammelled choice in an election." *Playskool Manufacturing Company*, 140 NLRB 1417 (1963). This is so "because the test of conduct which may interfere with the 'laboratory conditions' for an election is considerably more restrictive than the test of conduct which amounts to interference, restraint or coercion which violates Section 8(a)(1)." *Dal-Tex Optical Company, Inc.*, 137 NLRB 1782 (1962). I find, therefore, that Respondent did engage in conduct interfering with the election and the Union's objections thereto are sustained.

However, in view of the numerous unfair labor practices, particularly the repeated repudiation of the collective-bargaining agreement and other violations of Section 8(a)(5) which were designed to undermine the Union and led inevitably to the filing of the decertification petition, I find that the petition should be dismissed. As the court stated in *N.L.R.B.* v. *Big Three Industries, Inc.*, 497 F.2d 43 (5th Cir. 1974): "It would be particularly anomalous, and disruptive of industrial peace, to allow the employer's wrongful refusal to bargain in good faith to dissipate the Union's strength, and then to require a new election which 'would not be likely to demonstrate the employees' true, undistorted desires,' *NLRB* v. *Gissel Packing Co.*, 395 U.S. 575 (1969), since employee dissaffection with the Union in such cases is in all likelihood prompted by the employer-induced failure to achieve desired results at the bargaining table." Accordingly, I shall recommend that the representation proceeding be dismissed.

V. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with the operations of Respondent described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

VI. THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and take affirmative action designed to effectuate the policies of the Act.

Having found that Respondent engaged in extensive violations of Section 8(a)(5) of the Act by failing to implement the collective-bargaining agreement, and refusing to abide by various provisions such as wage rates, payments to union pension and welfare funds, paying for vacation benefits, and engaging in conduct tantamount to repudiation of the collective-bargaining agreement and its obligations thereunder, I shall recommend that Respondent be ordered to recognize and bargain with the Union in the unit found appropriate herein.

As it has been found that William Schneider and Albert Edwards were not paid a wage increase retroactively in accordance with an arbitration award, in violation of Section 8(a)(3) and (5) of the Act, I shall recommend that Respondent be ordered to make them whole for any loss of earnings they may have sustained, with interest to be computed in the manner set forth in *Florida Steel Corporation*, 231 NLRB 651 (1977). While the record is not entirely clear, it appears that, as a result of Respondent's failure to implement the arbitration award in a timely fashion, merit increases which Respondent granted to some employees on September 7, 1978, may have been subsumed in the $1 overall wage increase directed by the arbitrator. In such cases, Respondent shall likewise make those effected employees whole with interest.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(1) of the Act by:

(a) Threatening employees with loss of overtime and side jobs should they continue to support the Union.

(b) Promising increases in pension and welfare benefits if employees did not select the Union as their representative.

(c) Promising recognition of another labor organization or grievance committee of employees to induce employees to refrain from remaining members of and assisting the Union.

(d) Advising employees that they are not required to honor subpoenas to appear at arbitration proceedings.

4. Respondent violated Section 8(a)(3) of the Act by refusing, discriminatorily, to pay retroactive wages due to William Schneider and Al Edwards, because of their activities in behalf of the Union.

5. All production and maintenance employees, including plant clerical employees, employed at Respondent's New Hyde Park plant, excluding office clerical employees, superintendents, independent maintenance contractors, employees represented by labor organizations other than the Union, and all supervisors as defined in Section 2(11) of the Act, constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act.[15]

6. At all times material herein the Union has been the duly designated bargaining representative within the meaning of Section 9(a) of the Act of Respondent's employees employed in the bargaining unit described above.

7. Respondent violated Section 8(a)(5) of the Act by:

(a) Refusing at various times since November 29, 1978, to abide by and implement the terms of the current collective-bargaining agreement and repudiating its obligations thereunder.

(b) Refusing from November 29 until late December 1978 to grant certain employees wage increases and retroactive wages due them pursuant to an arbitration award rendered under the contract, and by refusing to pay other employees said wage increases and retroactive payments from November 29, 1978, until April 1979.

(c) Refusing to grant certain vacation benefits until December 1979 to employees pursuant to the collective-bargaining agreement.

(d) Failing and refusing to make prompt and proper payments to the Union's pension and welfare funds pursuant to the collective-bargaining agreement and arbitration award.

(e) Bargaining directly with employees in such a manner as to undermine the status of a duly designated collective-bargaining agent.

(f) Failing and refusing from early March 1979 until May 4, 1979, to furnish to the Union payroll records relating to the administration of the union pension and welfare funds, to be utilized in the processing of a grievance filed by the Union.

8. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the foregoing findings of fact, conclusions of law, and upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[16]

The Respondent, Autoprod Inc., New Hyde Park, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening employees with loss of overtime and side jobs if they select the Union to continue as their collective-bargaining representative.

(b) Promising increased benefits with respect to pension and welfare funds if they vote to decertify the Union as their collective-bargaining representative.

(c) Promising to recognize another union or a grievance committee of employees if they vote to decertify the Union.

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[15] The complaint alleges, the answer admits, and I find the above-described unit to be appropriate.

[16] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(d) Advising employees that they are not required to honor subpoenas served upon them for their attendance at arbitration hearings.

(e) Discriminating against employees, by withholding retroactive wage increases due them pursuant to an arbitration award, because of their continued adherence to the Union.

(f) Refusing to abide by the terms of a duly executed collective-bargaining agreement and repudiating its obligations thereunder.

(g) Refusing to timely implement wage increases pursuant to an arbitration award rendered in accordance with procedures established by the collective- bargaining agreement.

(h) Refusing to award employees additional vacation benefits granted in the said collective-bargaining agreement.

(i) Refusing to make proper and prompt payments to the Union's pension and welfare funds in accordance with the provisions of the collective-bargaining agreement and the said arbitration award.

(j) Bargaining directly with employees in such a manner as to undermine the status of a duly designated collective-bargaining agent.

(k) Refusing to furnish to the Union payroll records and information requested for the purpose of processing a grievance under the contract.

2. In any other manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed to them in Section 7 of the Act.[17]

3. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Make whole William Schneider and Al Edwards for any loss of retroactive wages they have suffered by reason of the discrimination practiced against them and found herein, in the manner described above in the section entitled "Remedy."

(b) Make whole any other unit employees who may have sustained losses in wages by reason of the unlawfully delayed payment of wage increases due them.

(c) Recognize and, upon request, bargain collectively with the Union herein as the exclusive bargaining representative of all of Respondent's production and maintenance employees, including plant clerical employees, employed at its New Hyde Park plant, excluding office clerical employees, superintendent maintenance contractors, employees represented by other labor organizations, and all supervisors as defined in the Act.

(d) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records, and reports, and all other records necessary to analyze the amount of backpay due.

(e) Post at its New Hyde Park plant copies of the attached notice marked "Appendix."[18] Copies of said notice on forms provided by the Regional Director for Region 29, after being duly signed by its authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notice is not altered, defaced, or covered by any other material.

(f) Notify the Regional Director for Region 29, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS ALSO FURTHER ORDERED that the complaint be dismissed with respect to allegations not specifically found to be violative of the Act.

IT IS ALSO FURTHER ORDERED that the election in Case 29–RD–311 be set aside, and that the petition therein be dismissed.

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[17] In this connection, notice is taken of the two prior Board orders involving violations of Sec. 8(a)(5) of the Act referred to above.

[18] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."